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HOUSE BILL 2044 By
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SENATE BILL 2808
By Rochelle

AN ACT to amend Tennessee Code Annotated, Title 56 and Title 45, Chapter 2, Part 11, to enact the "Insurance Sales Consumer Protection Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as the "Insurance Sales Consumer Protection Act of 1998".

SECTION 2. It is the purpose of this act to provide for regulating the business of insurance in Tennessee and protecting the interests of insurance policy holders in this state.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Financial institution" means a bank holding company, as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841, a bank, savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act as amended, 12 U.S.C. § 1813(c)(1), any subsidiary of any of the above, and any other person authorized to take deposits and make loans in the state. The term financial institution does not include an insurance company.

(2) The term "insurance" includes all products defined or regulated as insurance by the provisions of Tennessee Code Annotated except: (A) credit life, credit accident and health, credit property, credit casualty, and credit involuntary unemployment insurance; (B) insurance placed by a financial institution in connection with collateral

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pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance; and (C) private mortgage insurance.

(3) "Insurance company" means a company that possesses a certificate of authority to transact insurance business in Tennessee.

(4) "Person" means any natural person, partnership, corporation, association, business trust, unincorporated organization, or other form of business enterprise, plural or singular, as the case demands.

SECTION 4. The commissioner of commerce and insurance shall have the authority to promulgate administrative regulations in accordance with the Uniform Administrative Procedures Act to effectuate the purposes of this act.

SECTION 5. Solicitation for the purchase or sale of any insurance product by any person, including a financial institution, or employee or agent thereof, shall be conducted only by persons who have complied with all applicable state insurance licensing and appointment laws and regulations and who have been issued an agent or broker's license pursuant to Tennessee Code Annotated, Title 56, Chapter 6 .

SECTION 6. Solicitation for the purchase or sale of insurance shall be conducted only by persons whose responsibilities do not include loan transactions or other transactions involving the extension of credit. Provided, however, for an agency location having three (3) or less persons with lending authority, solicitation for the sale of insurance may be conducted by a person with responsibilities for loan transactions or other transactions involving the extension of credit so long as the person primarily responsible for making the specific loan or extension of credit is not the same person engaged in the solicitation for the purchase or sale of insurance for that same transaction.

SECTION 7. A person who is not licensed to sell insurance may refer a customer who seeks to purchase, or seeks an opinion or advice on, any insurance product to a person, or the phone number of a person, who sells or provides opinions or advice on such product; provided,

any compensation received by the person making the referral is only a nominal fee and is not based on the customer's application for or purchase of insurance; provided further that no person engaged in loan transactions shall receive any compensation for such referrals.

SECTION 8.

(a) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of, or is in any way related to, the lending of money or extension of credit, the establishment or maintenance of a trust account, the establishment or maintenance of a checking, savings, or deposit account, or the provision of services related to any such activities.

(b) No financial institution may offer an insurance product in combination with banking products unless the insurance products and banking products are available separately from the institution.

SECTION 9.

(a) Any person insured by the Federal Deposit Insurance Corporation ("FDIC"), and any person soliciting the purchase of or selling insurance on the premises of a person insured by the FDIC, shall prominently disclose in writing, in clear and concise language, to customers, including in any advertisement or promotional material, and orally during any customer contact, that insurance offered, recommended, sponsored, or sold:

- (1) is not a deposit;
- (2) is not insured by the Federal Deposit Insurance Corporation;
- (3) is not guaranteed by any insured depository institution; and
- (4) where appropriate, involves investment risk, including potential loss of principal.

(b) Any person engaged in the making of loans or other extensions of credit and the sale of insurance shall prominently disclose in writing, in clear and concise language, to customers that the insurance product may be purchased from an agent or broker of the customer's choice, and the customer's choice of another insurance provider will not affect the customer's credit relationship with the person. For purposes of this subsection, loans and extensions of credit shall not include financing in connection with the insurance product offered or sold.

(c) Any person required under subsections (a) or (b) of this section to make disclosures to a customer shall obtain a written acknowledgement of receipt by the customer of such disclosures, including the date of receipt and the customer's name, address, and account number, prior to any application for insurance sold by the person. Such acknowledgement shall be in a separate document.

SECTION 10. No person may knowingly, directly or indirectly, solicit the purchase of any insurance from a customer who has applied for a loan or extension of credit from the person, or any subsidiary or affiliate thereof, before such time as the customer has received a written commitment with respect to such loan or extension of credit or, in the event that no written commitment has or will be issued in connection with the loan or extension of credit, before such time as the customer receives notification of approval of the loan or extension of credit and the lending institution creates a written record of the loan or extension of credit approval.

SECTION 11.

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

(b) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

SECTION 12. No financial institution may:

(1) offer a banking product or service, or fix or vary the conditions of such offer, on a condition or requirement that the customer obtain insurance from the financial institution, or any particular agent or broker.

(2) in connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy because such policy has been issued or underwritten by any person who is not associated with such institution;

(3) impose any requirement on any insurance agent or broker who is not associated with the financial institution that is not imposed on any insurance agent who is associated with such institution; or

(4) unless otherwise authorized by any applicable federal or state law, require any debtor, insurer, broker, or agent to pay a separate charge in connection with the handling of insurance that is required under a contract.

SECTION 13.

(a) As used in this section, unless the context requires otherwise:

(1) "Customer" means a person with an investment, security, deposit, trust, or credit relationship with a financial institution; and

(2) "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution.

"Nonpublic customer information" does not include customer names, addresses and telephone numbers; and, in all events, "nonpublic customer information" shall include information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims, and insurance history of an individual.

(b) No person shall use any nonpublic customer information for the purpose of selling or soliciting the purchase of insurance or provide nonpublic

customer information to a third party for the purpose of another's sale or solicitation of the purchase of insurance, unless it is clearly and conspicuously disclosed that the information may be so used and the customer has provided prior written consent to the use for this purpose.

(c) Consent under subsection (b) of this section must be obtained in a separate document, distinct from any other transaction, and shall not be required as a condition for performance of other services for the customer.

SECTION 14.

(a) The place of solicitation or sale of insurance by any financial institution or on the premises of any financial institution shall be:

(1) physically separated and substantially distinct from the banking activities of the institution; and

(2) clearly and conspicuously signed so as to be readily distinguishable by the public as separate and distinct from the banking activities of the institution.

(b) Signs and other informational material concerning the availability of insurance products from the financial institution or on the premises of a financial institution shall not be displayed in an area where applications for loans or other extensions of credit are being taken or closed.

(c) The commissioner of commerce and insurance may grant a waiver of subsections (a) and (b) of this section upon request by a person demonstrating that it is not physically possible to comply, provided such person takes other steps that will minimize the likelihood of customer confusion and coercion.

SECTION 15. Books and records relating to the insurance transactions of any person licensed to sell insurance, including all files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to other business transactions of such

person, and shall be made available to the department of insurance for inspection upon reasonable notice.

SECTION 16. Tennessee Code Annotated, Title 56, is amended by adding Sections 1 through 15, as a new part or chapter, as appropriate.

SECTION 17. Tennessee Code Annotated, Section 45-2-1106, is amended by designating the existing language as subsection (a) and by adding the following new subsection (b):

(b) Any insurance which is required pursuant to the provisions of this section shall be acquired in accordance with the provisions of this act.

SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. This act shall take effect upon becoming a law, the public welfare requiring it.